

ANALYSIS OF ORIGINAL BILL

Franchise Tax Board

Author: Strickland Analyst: Kimberly Pantoja Bill Number: AB 401

Related Bills: See Legislative Telephone: 845-4786 Introduced Date: 02/12/99

History Attorney: Doug Bramhall Sponsor: _____

SUBJECT: Child Care Credit/Employer Child Care Qualified Care Plan Contributions Credit

SUMMARY

Under the Personal Income Tax Law (PITL) and the Bank and Corporation Tax Law (B&CTL), this bill would remove the sunset date of the Employer Child Care Contribution Credit. Under the PITL, this bill also would allow a credit equal to the amount of child care expenses paid or incurred during the taxable year, not to exceed \$300, for any child of the taxpayer who is under the age of 13 years.

Each of these provisions will be discussed separately.

EFFECTIVE DATE

This bill would take effect immediately as a tax levy. The Employer Child Care Contribution Credit is effective for taxable and income years beginning on or after January 1, 1999, but the child care credit specifies it applies to taxable years beginning on or after January 1, 2000.

1. EMPLOYER CHILD CARE CONTRIBUTION CREDIT

LEGISLATIVE HISTORY

SB 549 (1999/2000); AB 2798 (Stats. 1998, Ch. 323); SB 722 (Stats. 1988, Ch. 1239); AB 802 (Stats. 1989, Ch. 1352); SB 227 (Stats. 1991, Ch. 476); SB 1863 (Stats. 1992, Ch. 816); AB 2688 (1994); AB 3144 (Stats. 1994, Ch. 748); AB 642 (1997).

BACKGROUND

The two employer child care credits were created by SB 722 (Stats. 1988, Ch. 1239) with a sunset of January 1, 1992, that later was extended to January 1, 2003. The Employer Child Care Program credit was for 30% of the costs of starting a child-care program or facility. The Employer Child Care Contribution credit varied in amount based on whether contributions were to a full- or part-time qualified care plan for dependents of employees.

Over time, these credits have been amended to change certain definitions, the eligible age of the dependent of the taxpayer's employee, the percentage of the costs paid or incurred that qualify for the credit, and the amounts of the credits.

Board Position:

_____ S	_____ NA	_____ NP
_____ SA	_____ O	_____ NAR
_____ N	_____ OUA	_____ X PENDING

Department Director

Date

Gerald Goldberg

3/18/1999

SPECIFIC FINDINGS

Existing state law allows employers a tax credit, known as the Employer Child Care Program Credit, equal to 30% of the cost paid or incurred for (1) establishing a child care program or constructing a child care facility in California to be used by their employees' children and (2) contributing to child care information and referral services. Building owners also are allowed a credit equal to 30% of their costs to establish a child care program or facility to be used by their tenants' employees' children. The amount of the credit is limited to \$50,000, even if 30% of the taxpayer's expenses exceeds \$50,000, but to the extent that the allowed credit cannot be used, a credit carryover is permitted. The carried-over amount may be added to any credit for that succeeding year, which is still limited to \$50,000.

Existing state law allows employers a tax credit, known as the Employer Child Care Contribution Credit, equal to 30% of the cost paid or incurred for contributions to a qualified care plan made on behalf of any dependent under the age of 12 of the taxpayer's California employee, but only to the extent contributions are made directly to child care programs or providers. The amount of the credit cannot exceed \$360 in any year for each qualified dependent, and any unused credit may continue to be carried forward, even beyond the repeal date, until it has been exhausted.

This bill would remove the sunset date of the Employer Child Care Contribution Credit.

Policy Consideration

Credits generally contain a sunset date to allow periodic review by the Legislature. This bill would make the Employer Child Care Contribution credit permanent, reducing the likelihood of future legislative evaluation.

Implementation Considerations

Implementation of this provision would not impact the department.

FISCAL IMPACT

Departmental Costs

This provision is not expected to impact the department's costs.

Tax Revenue Estimate

The revenue loss for this provision of the bill is estimated as follows:

Effective With Income/Taxable Years Beginning On or After January 1, 2003 (millions)				
	2002-3	2003-4	2004-5	2005-6
Bank & Corporation Tax	(\$1)	(\$10)	(\$12)	(\$14)
Personal Income Tax	(minor)	(\$1)	(\$1)	(\$2)
Total	(\$1)	(\$11)	(\$13)	(\$16)

This analysis does not consider the possible changes in employment, personal income, or gross state product that could result from this measure.

Revenue Estimate Discussion

Revenue losses under the PITL and the B&CTL will depend on the number of taxpayers who contribute and the amount of contributions made to a qualified care plan.

Preliminary data for the 1997 taxable/income year indicate that there were \$7 million in applied credits (excluding prior year carryovers). It has been previously estimated that the revenue loss for the 2002 taxable/income year would be \$15 million (\$10 million in new credits and \$5 million in prior year carryovers).

2. THE CHILD CARE CREDIT

LEGISLATIVE HISTORY

AB 149 (1999/2000); AB 2026 (97/98); AB 90, AB 183 (95/96); AB 26, AB 66, SB 39 (93/94)

SPECIFIC FINDINGS

Existing federal law allows a credit against tax of 20%-30% (depending on the taxpayer's adjusted gross income) of employment-related costs of care for a qualifying individual. A qualifying individual is defined as a dependent of the taxpayer who is under the age of 13 or a dependent or spouse who is physically or mentally unable to care for him- or herself. Employment-related expenses are defined, generally, as those expenses incurred to enable gainful employment.

Existing federal law limits the qualifying amount of employment-related expenses incurred during a taxable year to \$2,400, if there is one qualifying individual, or \$4,800, if there are two or more qualifying individuals with respect to the taxpayer for that taxable year.

California had a similar credit based upon expenses for household and dependent care services necessary for gainful employment. That credit was a percentage of the federal credit; the percentage was based upon the taxpayer's AGI and ranged between 15% and 30%. That credit provision was repealed by its own terms December 1, 1993.

Prior state law allowed a \$1,000 credit to any qualified parent who filed as a head of household, a surviving spouse, or married filing jointly, and claimed a dependent child who had not reached the age of 13 months. The qualified parent (or spouse in the case of a joint return) could not have earned income. The \$1,000 was reduced for surviving spouses or married taxpayers if the spouse's income exceeded certain levels. This credit was allowed in 1991, 1992, and 1993.

This bill would allow a dollar-for-dollar credit for an amount equal to the amount paid or incurred, not to exceed \$300, for child care for any child of the taxpayer who is under the age of 13 years.

The credit would be allowed regardless of the employment status of either parent.

This bill would allow a carryover of any portion of this credit that exceeds net tax until the credit is exhausted. Since this bill does not specify otherwise, the general rules in state law that apply to the division of credits among two or more taxpayers would apply. This credit would not reduce regular tax below tentative minimum tax for purposes of alternative minimum tax.

Policy Consideration

This provision does not specify a repeal date for the credit or limit the number of years for the carryover. Credits are typically enacted with a repeal date to ensure that the Legislature reviews its effectiveness. Also, departmental experience indicates that credits are typically used within eight years of being earned. Recent credits have been enacted with a carryover period limitation so the department is not required to retain the credit carryover on the tax form indefinitely after its repeal date.

Implementation Considerations

This bill uses the term "child care"; however, this term is not defined in the bill. It is unclear, for example, if "child care" includes expenses, services and/or payments to related individuals.

The bill does not require the credit to be claimed only with respect to the taxpayer's dependent children. Therefore, it appears that both divorced parents could claim the credit on the same child if each has child care expenses. Clarification is needed if this is not the author's intent.

Department staff is available to assist with any amendments to resolve these issues.

FISCAL IMPACT

Departmental Costs

Once the implementation concerns are resolved, this provision should not significantly impact the department's costs.

Tax Revenue Estimate

The revenue loss for this provision of the bill under the PITL is estimated as follows:

Effective on or after January 1, 2000 Assumed Enactment After June 30, 1999 (millions)			
1999-0	2000-1	2001-2	2002-3
(\$50)	(\$700)	(\$720)	(\$750)

This analysis does not consider the possible changes in employment, personal income, or gross state product that could result from this measure.

Revenue Estimate Discussion

Revenue losses under the PITL would depend on the number of qualifying dependents and the amount of tax liability that is available to apply these credits.

The above estimate is based on the department's Personal Income Tax Model simulated to reflect the provisions of this bill. The number of dependents was based on the Department of Finance's population projections. The population of those under age 13 is approximately 7 million. This equates to 74% of total population under age 19 (this age is generally the maximum for tax exemption purposes). For purposes of a revenue impact, all dependent exemptions (tax model) were increased by \$300, then applied 70% (reduced from 74% to allow for some dependents older than 19 or parents) to the increase to determine the revenue loss for dependents for this bill. Due to the potentially broad scope of this proposal, all dependents under age 13 claimed by parents (or parent) were allowed to qualify.

Cash flow estimates above for this proposal do not assume that withholding tables would be changed to incorporate this age-based credit. Therefore, estimates largely reflect end-of-year claims.

BOARD POSITION

Pending.